

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015070319

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 30, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request¹ (complaint) naming Fresno Unified School District. The complaint alleges ten issues.

On July 8, 2015, Fresno filed a Notice of Insufficiency as to Issues One, Three, Four, Five, Six, Seven, Eight, Nine, and 10 of Student's complaint. On July 7, 2015, Fresno also filed a motion to dismiss and strike. This order only involves Fresno's NOI.

On July 10, 2015, Student filed an opposition to Fresno's motion to dismiss and strike, which included an opposition to the NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges 10 claims, of which eight are insufficiently pled as discussed below. Student’s complaint, except for Issues Two and Six, is insufficiently pled in that it fails to provide Fresno with the required notice of a description of the problem and the facts relating to the problem.

The complaint contains 15 pages. A Statement of Facts is alleged on pages two through 11. Pages two and three contain background starting in kindergarten. Pages three through 11 contain allegations as to Fresno’s failure to provided Student’s parents with progress reports as to his progress on his goals for each annual Individualized Education Program. These factual allegations support Student’s second and sixth issues only.

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Issue one alleges that Fresno has refused to provide Student with appropriate special education and related services from 2010-2011 through school year 2014-2015 despite Student's lack of progress. Student fails to allege any facts as to what special education services Fresno refused to provide Student and at what school year it occurred. Student should list each school year and what specific services Fresno refused to provide.

Issue three alleges that Fresno (a) failed to develop appropriate measurable goals during IEP meetings from 2010 through 2015, and (b) that the failure to adopt appropriate goals caused procedural violations which caused Student to be denied a free appropriate public education and Parents to be denied to meaning participate in the IEP process. Student fails to allege any facts to support these allegations. Student should list each specific goal which it contends was not appropriate by each IEP, how it caused Student's right to a FAPE to be denied, and specify how Parents were denied meaningful participation in the IEP process.

In *issue four*, Student alleges that from 2010-2015, Fresno failed to offer appropriate programs, placements, accommodations, modifications, and services to meet Student's unique needs and provide him educational benefit. Student fails to allege any facts to support this issue. Again, Student should list, by IEP, how the IEP failed to be appropriate in not meeting his unique needs.

In *issue five*, Student contends that Fresno denied Student a FAPE by failing to offer educational services reasonably calculated to confer educational benefit from school year 2012-2013 through 2014-2015. Student alleges that Fresno failed to give Student "adequate support" knowing that Student was struggling. Student also alleges that Fresno failed to increase support services when it eliminated the "Learning Strategies class during 2014-2015 which was detrimental to Student. Student fails to specify what services were not offered for each school year, why they should have been offered, and how they would have provided Student educational benefit. As to 2014-2015, Student fails to demonstrate how the elimination of the "learning Strategies" class has resulted in Student losing education benefit.

Issue seven alleges that Fresno failed to implement IEP goals and services in all school years since 2010-2011. Student fails to allege any facts to support this issue.

Issue eight alleges that Fresno failed to provide Prior Written Notice from 2012 through the 2014-2015 school year. Student fails to allege any facts to support this issue. Student should allege each time that Fresno should have issued a Prior Written Notice and how this failure denied Student a FAPE.

In *issue nine*, Student alleges that Fresno failed to provide Student with a FAPE when it refused to provide intervention services at his reading instructional levels, refused to authorize additional interventions after school hours by trained and qualified personnel, and refused to consider parental and professional input on the appropriateness of Student's annual goals, placement, and services. Student contends that the District recommendations

for past and current placement are not in the least restricted environment and failed to meet Student's academic and functional needs. Student fails to offer any specifics as what services Fresno refused to provide, what specific time period is involved, and how and when Fresno refused to consider parental and professional input.

Issue ten alleges that Fresno failed "to have all legally required persons in attendance at IEP meetings." Student offers not one fact to support this contention. Student should list each IEP meeting where this occurred and which required person was not in attendance to provide Fresno adequate notice.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues One, Three, Four, Five, Seven, Eight, Nine, and Ten of Student's complaint are insufficiently pled under Title 20 United States Code sections 1415(c)(2)(D) and 1415(b)(7)(A)(ii).

2. Issues Two and Six of Student's complaint are sufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii).

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹

4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues Two and Six in Student's complaint.

8 Ed. Code, § 56505.

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

DATE: July 13, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings